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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,249	10/31/2003	Richard C. Essig	2060/68(a)	2514
7590 12/21/2005			EXAMINER	
W. Scott Carson, Esq. Dorr, Carson, Sloan, Birney & Kramer, P.C. 3010 East 6th Avenue Denver, CO 80206			VANterpool, LESTER L	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/699,249

Applicant(s)

ESSIG, RICHARD C.

Examiner

Lester L. Vanterpool

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/12/2004.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 15, 17 – 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schnell (German Patent Number DE 3739364 A1). Schnell discloses a vehicle having a top with at least a portion of the top mounted for movement between a closed position covering the interior of the vehicle and an open position uncovering at least part of the interior of the vehicle, wherein the top with the movable portion in the closed position having a roof line extending below a horizontal plane, with the top portion in being moved between the closed and open positions passing along a path extending above the horizontal plane. Wherein the roof rack has a main frame attached to the vehicle and the rack portion (horizontal cross bars) mounted to the main frame for movement relative thereto between a first position extending substantially across the vehicle above the roof line of the vehicle top in the path of movement of the top portion and a second position extending out of the path of movement of the top portion wherein the top portion with the rack portion in the second position can be moved along the path above the horizontal plane between the closed and open positions. See Figure 1.

Regarding claim 15, Schnell discloses the rack portion (horizontal cross bars) having a pair of spaced-apart, elongated members respectively extending along substantially parallel axes. See Figure 1.

Regarding claim 17, Schnell discloses attaching the main frame of the roof rack to the vehicle; in addition, Schnell discloses mounting the rack portion to the main frame for movement relative thereto between a first position extending substantially across the vehicle above the roof line of the vehicle top in the path of movement of the top portion and a second position extending out of the path of movement of the top portion; furthermore, Schnell also discloses moving the rack portion from the first to the second position; and furthermore, moving the top portion with the rack portion in the second position along the path above the horizontal plane to one of the closed and open positions. See Figures 1 and 2.

Regarding claim 18, Schnell discloses moving the rack portion from the second position to the first position with the top portion in one of the closed and open positions. See Figure 1.

Regarding claim 19, Schnell discloses the limitations of extending the rack portion substantially horizontally in the first position and substantially vertically in the

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second position and selectively supporting the rack portion in a position inclined to the vertical between the first and second position. See Figure 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnell (European Patent Number DE 3739364 A1) in view of Spring Jr. (U. S. Patent Number 5884824). Schnell teaches everything except for the rack portion being pivotally mounted to the main frame for movement relative thereto about the pivotal axis. Spring Jr. teaches the rack portion (42) is pivotally (68) mounted to the main frame (54) for movement relative thereto about a pivotal axis. See Figures 1 and 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a rack portion pivotally mounted to the cross bars of the main frame of Schnell as taught by Spring Jr. for movement to allow for easier loading and unloading of the rack.

Regarding claim 3, as stated above in claim 1, Spring Jr. teaches the pivotal axis is substantially horizontal (column 14, line 1 – 3). See Figure 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the roof rack portion substantially horizontal to enhance the operational position to present no interference with doors or window and reduces or eliminates hazards to passerby's.

Regarding claim 4, as stated above in claim 1, Spring Jr. teaches the rack portion (42) has first (84) and second (82) members slidably mounted to each other for movement relative to each other along an axis substantially perpendicular to the pivotal axis (column 12, line 56 and column 13, line 52). See Figures 1, 3 and 4. It would have

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been obvious to one having ordinary skill in the art the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 5, as stated above in claim 1, Spring Jr. teaches the rack portion has first (84) and second (82) members slidably mounted to each other for movement relative to each other along a sliding axis (column 11, line 3 – 5). See Figures 4 and 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to enhance the ease of the rack portion maneuverability function to reduce the stress and strain place on the human body when exerting manually force while pulling an overhead load in a substantially horizontal position.

Regarding claim 6, as stated above in claim 1, Spring Jr. teaches the first member (84) of the rack portion (42) is pivotally (68) mounted to the main frame (54) for movement relative thereto about substantially horizontally across the vehicle above the roof line (16) of the vehicle top in the path of movement of the top portion and a position spaced therefrom about the pivotal axis (column 11, line 13 – 20). See Figure 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 7, as stated above in claim 1, Spring Jr. teaches the second member (82) of the rack portion (42) with the first member (84) in the horizontal position across the vehicle is slidably movable along the sliding axis relative to the first member (84) between a location extending substantially across the vehicle and the location with at least part of the second member (82) substantially outboard of a side of the vehicle (column 11, line 27 – 29). See Figures 1 and 7. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 8, as stated above in claim 1, Spring Jr. teaches the rack portion (42) with the second member (82) in the outboard location is pivotally (68) movable about the pivotal axis to move the rack portion (42) including the first (84) and second (82) members to a substantially vertical position (column 11, line 12 – 20). See Figures 1 and 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 9, as stated above in claim 1, Spring Jr. teaches the main frame (54) includes an upwardly open member (58) to removably receive an end segment of the first member (84) of the rack portion (42) with the first member (84) in the horizontal



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position and wherein the second member (82) includes an end segment thereof overlapping the upwardly open member (58) along the sliding axis to maintain the first member (84) in the horizontal position (column 15, line 8 – 11). See Figures 2 and 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to enhance the stability of the rack while in transport mode and to enhance the operational position to present no interference with doors or window and reduces or eliminates hazards to passerby's while the vehicle is in motion.

Regarding claim 10, as stated above in claim 1, Spring Jr. teaches the first (84) and second (82) members of the rack portion (42) are concentrically mounted to each other about the sliding axis (column 12, line 46 – 50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 11, as stated above in claim 1, Spring Jr. teaches the roof rack (42) further including a locking mechanism to releasably secure the second member (82) to the first member (84) with the first member (84) in the horizontal position (column 14, line 40 – 52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to enhance the stability of the rack while in transport mode and to enhance the operational position to present no interference with doors or window and reduces or eliminates hazards to passerby's while the vehicle is in motion.

Regarding claim 12, as stated above in claim 1, Spring Jr. teaches the roof rack portion (42) is pivotally mounted to the main frame for movement relative thereto about a substantially horizontal axis between the first and second positions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 13, as stated above in claim 1, Spring Jr. teaches the rack portion (42) extends substantially horizontally in the first position and substantially vertically in the second position and the roof rack further includes a mechanism (180) selectively positionable to support the rack portion (42) in an inclined position between the first and second positions with the rack portion (42) at an inclined angle to the vertical (column 16, line 59). See Figure 16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the sunroof to be raised or lowered in the normally intended fashion and would be done without having to unload the items from the rack portion.

Regarding claim 14, as stated above in claim 1, Spring teaches the mechanism (180) includes a member (182) mounted to the rack portion (42) and movable between a retracted position and an extended position, the member in the extended position engaging the vehicle to hold the rack portion in the inclined position (column 16, line

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62). See Figure 16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow enhance and reduce the stretching and strain placed on the human body to load and unload items on or off the vehicle for transporting.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schnell in view of Ferguson (U.S. Patent Number 6520393). Schnell teaches everything as claimed; however, Schnell does not disclose a roof rack with at least one tray. Ferguson teaches a roof rack (24) having at least one tray (18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the roof rack tray (18) taught by Ferguson to the roof rack of Schnell to transport larger and heavier equipment, gear, and items such as canoes or kayaks.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LLV



**NATHAN J. NEWHOUSE**  
**SUPERVISORY PATENT EXAMINER**